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OFFICE OF PETITIONS

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In re Patent No. 7,842,457 :
Issued: November 30, 2010 : DECISION ON REQUEST FOR
Application No. 10/767,899 : RECONSIDERATION OF
Filed: January 28, 2004 : PATENT TERM ADJUSTMENT
Attorney Docket No. 21465-508001US :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM INDICATED ON FACE OF PATENT UNDER 37 C.F.R. §1.705(d)" filed January 28, 2011.

The request is **DISMISSED**.

Patentees are given **THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer**, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

On November 30, 2010, the above-identified application matured into U.S. Patent No. 7,842,457 with a revised patent term adjustment of 413 days. On January 28, 2011, patentees timely submitted this application for patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 427 days.

Patentee disputes the reduction of 14 days for applicant delay and argues that the IDS filed September 9, 2010 included a certification statement, pursuant to 37 C.F.R. § 1.704(d), and should "not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under 37 C.F.R. § 1.704(c)(8)."

Applicant's argument has been considered but is not found to be persuasive.

A review of the file reveals that 14 days was deducted for applicant delay for the filing of the IDS on September 9, 2010, pursuant to 37 C.F.R. § 1.704(c)(10) not 37 C.F.R. § 1.704(c)(8) as the IDS was filed after the mailing of the Notice of Allowance on July 14, 2010.

37 CFR § 1.704(c)(10) provides that:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

The reduction has been considered a proper basis for reduction of patent term adjustment pursuant to § 1.704(c)(10).

As stated in MPEP 2732:

37 CFR 1.704(c)(10) establishes submission of an amendment under 37 CFR 1.312 or other paper after a notice of allowance has been given or mailed as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. The submission of amendments (or other papers) after an application is allowed may cause substantial interference with the patent issue process.

Certain papers filed after allowance are not considered to be a failure to engage in reasonable efforts to conclude processing or examination of an application. See *Clarification of 37 CFR 1.704(c)(10) – Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed*, 1247 Off. Gaz. Pat. Office 111 (June 26, 2001). The submission of the following papers after a “Notice of Allowance” is not considered a failure to engage in reasonable efforts to conclude processing or examination of an application: (1) Fee(s) Transmittal (PTOL-85B); (2) Power of Attorney; (3) Power to Inspect; (4) Change of Address; (5) Change of Status (small/not small entity status); (6) a response to the examiner’s reasons for allowance or a request to correct an error or omission in the “Notice of Allowance” or “Notice of Allowability;” and (7) letters related to government interests (e.g., those between NASA and the Office). Papers that will be considered a failure to engage in reasonable efforts to conclude processing or examination of an application include: (1) a request for a refund; (2) a status letter; (3) amendments under 37 CFR 1.312; (4) late priority claims; (5) a certified copy of a priority document; (6) drawings; (7) letters related to biologic deposits; and (8) oaths or declarations.

In view thereof, the patent term adjustment indicated in the patent is properly reflected.

The Office acknowledges the submission of the required fee of \$200.00 set forth in 37 CFR 1.18(e) .

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large initial "P".

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions